

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID HALADAY, a single man,
MATTHEW DARE, a single man,

Plaintiff,

v.

THURSTON COUNTY FIRE DISTRICT NO.
1, UNITED STATES POSTAL SERVICE, a
Government Agency with a branch located in
Centralia, Washington,

Defendant.

Case No. C04-5395

ORDER DENYING PLAINTIFFS'
MOTION FOR LEAVE TO AMEND
COMPLAINT

Before the court is the motion of Plaintiffs David Haladay and Matthew Dare for leave to amend their complaint and correct drafting errors. The court, having review the motion, the proposed amendments, and opposition of Defendant Thurston County Fire District No. 1 ("the District")¹, finds that the proposed amendments are untimely, made with undue delay and will result in prejudice to the District.

I.

Contrary to Plaintiffs' belief, the court's Order Scheduling Pretrial Dates provides a filing deadline for pleadings of October 17, 2005. The deadline for filing dispositive motions was

¹Plaintiff's reply, filed late due to problems with the court's electronic filing system, has also been reviewed and considered by the court.

1 November 4, 2005.

2 The Complaint was filed on July 2, 2004. Plaintiffs' motion for leave to amend was filed on
3 November 4, 2005. On that same day, the District filed its motion for summary judgment. Plaintiffs'
4 motion to amend is based on the alleged discovery of "an additional claim that could be asserted
5 against the Defendant," and that this claim was previously unknown to Plaintiffs. Plaintiffs also claim
6 that, due to drafting errors of their counsel, "a clause" was left out of the complaint that was
7 intended to be put in the complaint. Plaintiffs do not specify either the "additional claim" or omitted
8 "clause."

9 II.

10 Leave to amend shall be freely given when justice so requires. Fed.R.Civ.P. 15(a). Five
11 factors are considered by the court: (1) bad faith; (2) undue delay; (3) prejudice to the opposing
12 party; (4) futility of amendment; and (5) whether plaintiff has previously amended the complaint.
13 *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Not all five factors need to apply
14 to deny a motion to amend. *Id.* The court finds that undue delay and prejudice to the District in this
15 case require denial of Plaintiffs' motion.

16 It is undisputed that Plaintiffs' motion is untimely as it was filed sixteen months after their
17 original complaint and after the court's deadline for filing amended pleadings.

18 Plaintiffs have provided the court with no guidance as to where its "new claim" occurs in the
19 proposed Amended Complaint. Although Defendant has gone to the trouble of parsing out the
20 additional language for the court's convenience, it still remains unclear to the court which new
21 language is being added due to a faulty drafting error and which is being added due to new facts
22 uncovered during discovery. In fact, the new theories included in the proposed amended complaint
23 are conclusory allegations unsupported by facts. Additionally, there is no justification for allowing
24 an amendment where, as here, the facts and the theory were known, or should have been known, to
25 Plaintiffs prior to filing their complaint (*i.e.*, failure to investigate a claim filed four months before

1 this action; failure to accommodate Plaintiff Haladay during testing).

2 Plaintiffs' attempt to add a conspiracy claim must also fail as they have failed to allege an
3 agreement or overt unlawful act. Although Plaintiffs' counsel has attempted to outline factual
4 allegations recently learned in discovery, they do not appear in the proposed amendment and no
5 explanation is given for the delay in filing.²

6 Similarly, Plaintiffs' attempt to add a claim for intentional infliction of emotional distress as to
7 Plaintiff Dare must be denied because it states only a new legal theory.

8 Plaintiffs' justification of faulty drafting is also not persuasive as the reasons set forth are
9 vague, unsupported and unexplained. Plaintiffs claim that a clause was "left out" of the complaint
10 "that was intended to be put in the complaint." However, Plaintiffs do not identify which clause or a
11 solid reason for why it was omitted. As Plaintiffs claim the clause was intended to be included, the
12 Court can only conclude that Plaintiffs were aware of it at the time of the initial drafting.

13 III.

14 Defendants will be forced to seek additional discovery (in addition to the two sets of written
15 interrogatories and requests for production already propounded and 13 depositions already taken) in
16 order to properly prepare its defenses to the new theories, including those of conspiracy and
17 emotional distress as to Plaintiff Dare. The additional discovery will necessarily increase the cost of
18 this litigation. The court's case schedule will also be disrupted and delayed as discovery is reopened
19 and other pretrial dates are reset. In addition, ruling on the District's pending summary judgment

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21 ²The parties devote a great deal of time arguing whether Plaintiffs obstructed the discovery
22 process or whether the trial schedule of Plaintiffs' counsel is to blame. As relief from any discovery
23 disputes or obstacles was never sought, the court declines to arbitrate the issue now. It could be
24 inferred from Plaintiffs' motion that "new" facts were discovered during defense depositions (taken
25 by agreement between October 4th and October 21st). However, Plaintiffs fail to articulate when the
26 operable facts were discovered and why, if the deadline had passed, they did not seek an extension
(counsel's insistence that there was no amendment deadline notwithstanding). More importantly, as
noted above, the proposed amendment contains no facts to support the "newly" discovered causes of
action.


1 motion will be delayed to allow a rewrite after additional discovery and further research. The
2 resulting increased cost to the District is unfair and unwarranted.

3 ACCORDINGLY,

4 IT IS ORDERED:

5 (1) Plaintiffs' motion for leave to amend complaint and to correct drafting (Dkt.#28) is
6 **DENIED.**

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8 DATED this 22nd day of November, 2005.

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11 FRANKLIN D. BURGESS
12 UNITED STATES DISTRICT JUDGE
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